



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2004

Chief Don Hatcher
City of Leander
Leander Police Department
P.O. Box 319
Leander, Texas 78646-0319

OR2004-5644

Dear Mr. Hatcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204109.

The Leander Police Department (the "department") received a request for a copy of report number 301735. You claim that the report is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you claim that the requested report is protected from disclosure under section 552.101 in conjunction with a provision of the Patriot Act. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information protected by state statutes and certain federal statutes that were specifically written to apply to records of state entities. The Patriot Act is a federal law that only applies to federal agencies and their records; its provisions are not applicable to records created and maintained by a governmental body of the State of Texas. *See* Open Records Decision No. 561 at 7 (1990). Furthermore, this office has stated in numerous opinions that information in the possession of a governmental body of the State of Texas is not confidential or excepted from disclosure merely because the same information is or would be confidential in the hands of a federal agency. *See, e.g.,* Attorney General Opinion MW-95 (1979) (concluding that neither Freedom of Information Act nor the federal Privacy Act of 1974 applies to records held by state or local governmental bodies in Texas); Open Records Decision No. 124 (1976) (concluding fact that information held by federal agency is excepted by Freedom of

Information Act does not necessarily mean that same information is excepted under the Public Information Act when held by Texas governmental body). *But see* Open Records Decision No. 561 at 8 (1990) (stating that when federal entity shares confidential information with state agencies, that information remains confidential in the hands of state entity). Since the report at issue is a record that was created by the department, it may only be withheld if it is excepted under a provision of the Public Information Act or another applicable state law.

Next, you claim that the report is excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. Gov't Code § 552.108(a)(1). In raising subsection 552.108(a)(1), a governmental body must advise this office of the status of the particular investigation or prosecution at issue. You do not state that the requested report relates to a case that is currently being investigated by the department. Furthermore, you have not otherwise demonstrated how the release of the report will interfere with the department's law enforcement efforts. Therefore, the department has failed to demonstrate its section 552.108(a)(1) claim. You have submitted documentation showing that the department also notified the Federal Bureau of Investigation (the "FBI") of the request and of its right to submit arguments to this office as to why the report should not be released. *See generally* Open Records Decision Nos. 474 (1987), 372 (1983) (concluding that Gov't Code § 552.108 may be invoked by any proper custodian of information that relates to pending criminal investigation or prosecution). The FBI has indicated to this office that it does not seek to withhold the requested records from disclosure. *See* Gov't Code § 552.304 (providing that interested party may explain why requested information should or should not be released). Accordingly, we find that the department may not withhold the report under section 552.108(a)(1) of the Government Code.

The report contains social security numbers that may be confidential under federal law. A social security number or "related record" may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers in the report are confidential under section 405(c)(2)(C)(viii)(I), and are therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution the department, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, you should ensure that the numbers were not obtained or maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990. We note, however, that the laws protecting social security numbers are intended to protect an individual's privacy. Therefore,

the requestor has a special right of access to her social security number, and it may not be withheld under section 552.101 in conjunction with federal law. *See* Gov't Code § 552.023(b)(person or person's authorized representative has special right of access to records that contain information relating to that person that are protected from public disclosure by laws intended to protect that person's privacy interests).

Finally, you assert that the report contains motor vehicle information that is excepted from disclosure under section 552.130. Section 552.130 of the Government Code excepts information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(1),(2). Section 552.130 excepts information from disclosure in order to protect an individual's privacy. Therefore, the requestor also has a special right of access to her motor vehicle information, and such information may not be withheld under section 552.130. *See* Gov't Code § 552.023(b). We have marked the motor vehicle information that must be withheld from disclosure under section 552.130 of the Government Code.

In summary, the social security number of an individual other than the requestor may be excepted from disclosure under federal law. The marked motor vehicle information must be withheld under section 552.130. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

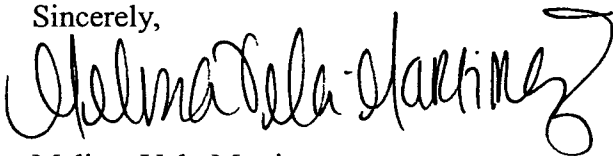
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Melissa Vela-Martinez". The signature is fluid and cursive, with a large loop at the end.

Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 204109

Enc. Submitted documents

c: Mr. Zeinab Hamid
2015 Palos Verdes
Leander, Texas 78641
(w/o enclosures)